



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 10, 1998

Mr. Jason C. Marshall  
Nichols, Jackson, Dillard,  
Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR98-1645

Dear Mr. Marshall:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 116404.

The City of Coppel (the "city") received an open records request to examine certain information. Specifically, the requestor, seeks "to examine all documentation of investigation of viewing and exchanging of pornography by police and employees of [the city]," and "to examine all documentation of allegations of sexual impropriety by police and employees of [the city] which transpired in 1996, 1997 and 1998." In response to the request, you submit to this office for review a copy of the records, which you assert are responsive. Based on your letter, it is our understanding that the city has provided the requestor with front page information from the responsive offense reports.<sup>1</sup> You contend that the remaining information responsive to the request is excepted from disclosure pursuant to sections 552.108 and 552.111 of the Government Code. We have considered your arguments and have reviewed the information submitted.

As a preface to our discussion, we note that if the requested records overlap with any information which was the subject of our previous ruling in Open Records Letter No. 98-1505 (1998), then the city should withhold or release this information as directed in that ruling. A copy of that ruling is enclosed for your convenience.

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<sup>1</sup>You state that the city will release "basic information" about the investigations contained in the front page of the investigation reports.

We will first address the applicability of section 552.111 to the records at issue. Section 552.111 of the Government Code excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 (1993) at 5. The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). In Open Records Decision No. 615 (1993) at 5, this office held that

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters . . . [Emphasis in original.]

Because the records at issue pertain to personnel matters, and not the formation of policy, none of the records at issue may be withheld pursuant to section 552.111.

You next contend that the internal affairs investigations are excepted from required public disclosure pursuant to sections 552.108(b)(1) and 552.108(b)(2) of the Government Code. Section 552.108(b) of the Government Code, as amended by the Seventy-fifth Legislature, excepts from required public disclosure, in pertinent part,

[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

- (1) release of the internal record or notation would interfere with law enforcement or prosecution;
- (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

Although one of the purposes of the exception is to protect law enforcement and crime prevention efforts by preventing suspects and criminals from using records in evading detection and capture, *see* Open Records Decision Nos. 133, 127 (1976), we note that the allegations contained in the internal affairs investigations are not of a criminal nature.<sup>2</sup> You have not demonstrated how the release of the information at issue would interfere with law

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<sup>2</sup>This office has determined that section 552.108 does not protect general personnel information from public disclosure. Open Records Decision No. 562 (1990) at 10 (applying predecessor statute).

enforcement for purposes of section 552.108(b)(1).<sup>3</sup> Further, because these internal affairs investigations are administrative, as opposed to criminal, in nature, we do not believe that section 552.108(b)(2) was intended to protect such investigations, which cannot possibly result in conviction or deferred adjudication absent a related criminal investigation. *See also Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied) (predecessor statute to section 552.108 not applicable were no criminal investigation resulted). Consequently, the city may not withhold the internal affairs investigations pursuant to either section 552.108(b)(1) or 552.108(b)(2).

Although you have not raised section 552.101 as an applicable exception, we note that some information revealed in the submitted records, may be excepted from required public disclosure under this section. The Office of the Attorney General will raise section 552.101 on behalf of a governmental body when necessary to protect third-party interests. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Section 552.101 encompasses the common-law right to privacy. Section 552.102(a) protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The test to determine whether information is private and excepted from disclosure under common-law privacy provisions, which are encompassed in section 552.101 and section 552.102 of the Government Code, is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Tex. Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files pertaining to an investigation of allegations of sexual harassment. The investigatory files at issue in *Morales v. Ellen* contained individual witness and victim statements, an affidavit given by the individual accused of the misconduct in response to the allegations, and the conclusions of the board of inquiry that conducted the investigation. *Id.* The court held that the names of witnesses and their detailed affidavits regarding allegations of sexual harassment was exactly the kind of information specifically excluded from disclosure under the privacy doctrine as described in *Industrial Foundation*. *Id.* at 525. However, the court ordered the release of the summary of the investigation with the identities of the victims and witnesses deleted from the documents, noting that the public interest in the matter was sufficiently served by disclosure of such documents and that in that particular instance "the public [did] not possess

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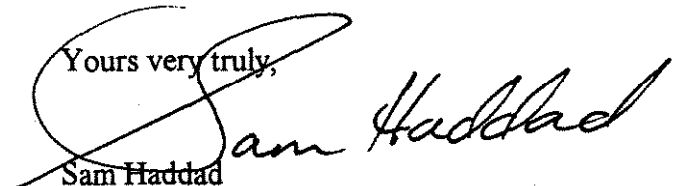
<sup>3</sup>We note that police officers are generally required, as a condition of employment, to fully cooperate in internal affairs investigations.

a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements." *Id.* at 525.

In this instance, however, it is not clear to this office whether or to what extent the city has previously released details of the alleged sexual harassment to the public. Consequently, we have no basis for concluding that the city has sufficiently informed the public of the details of the allegations against the police officer. Although this office feels compelled to follow the *Ellen* decision with regard to the complainant's identity, we nevertheless recognize the public's legitimate interest in being made aware of the actions of its city officials. We have marked the type of information the city must withhold to protect the identity of the complainant. All remaining information contained in the complaint must be released. Therefore, the records at issue must be released to the requestor in their entirety, except for information subject to section 552.101 and any information that would reveal city employees' home address, telephone number, social security number, or information about family members. See Gov't Code §§ 552.024, 552.117.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

  
Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/mjc

Ref.: ID# 116404

Enclosures:

cc: Mr. Doyle Calfey  
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(w/o enclosures)